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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/7/19,224

11/21/2003

Janet K. O'Grady

T-733

3177

27752 7590 04/16/2007

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EXAMINER

ARNOLD, ERNST V

ART UNIT

PAPER NUMBER

1616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/719,224	Applicant(s) O'GRADY ET AL.	
	Examiner Ernst V. Arnold	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 11-32 is/are pending in the application.
- 4a) Of the above claim(s) 11-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 22-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-6 and 11-32 are pending. Claims 7-10 have been cancelled. Claims 11-21 have been withdrawn. Claims 22-32 are new.

Withdrawn rejections:

Claims 1, 2 and 4 were rejected under 35 U.S.C. 102(a) and 35 U.S.C. 102(e) as being anticipated by Jensen et al. (US 2002/0192246 A1 (published: Dec. 19, 2002)). Applicant has amended the claims to distinguish the instant invention from the cited art. The Examiner withdraws the rejection.

Claims 1, 2 and 4 were rejected under 35 U.S.C. 102(b) as being anticipated by Hsieh (WO 98/30198). Applicant has amended the claims to distinguish the instant invention from the cited art. The Examiner withdraws the rejection.

Claims 1, 2 and 4 were rejected under 35 U.S.C. 102(b) as being anticipated by Mausner (US 5,571,503). Applicant has amended the claims to distinguish the instant invention from the cited art. The Examiner withdraws the rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 24-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 24-32 introduces new matter as the claims recites the limitation "array". There is no support in the specification for this term. The ordinary meaning of array from the Cambridge Online Dictionary is: "a large group of things or people". The limitation of "array" was not described in the specification as filed, and person skilled in the art would not recognize in the applicant's disclosure a description of the invention as presently claimed. The specification discloses "one could apply two different compositions" on page 4 but does not describe the greater scope of an array. Therefore, it is the Examiner's position that the disclosure does not reasonably convey that the inventor had possession of the subject matter of the amendment at the time of filing of the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-6 and 24-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stoner et al. (US 5,902,574) in view of Fike (US 5,612,382) and Lisboa et al. (US 5,679,324).

Applicant claims a topical cosmetic composition for providing noticeably healthy looking human skin comprising a topical cosmetic carrier vehicle including vitamin A, vitamin E, aloe, and at least one member selected from the group consisting of bisabolol, panthenol, vitamin B₃ and vitamin C, wherein said vitamin A, said vitamin E, said aloe, and said at least one member are each independently included in an amount of about 0.001% to about 5% by weight of the composition further comprising a lathering agent, a foaming agent and/or a self-foaming agent.

Determination of the scope and content of the prior art

(MPEP 2141.01)

Stoner et al. teach shaving preparations for improved shaving comfort (title).
Stoner et al. teach a shaving composition in the form of a self-foaming shaving gel

Art Unit: 1616

comprising a volatile hydrocarbon self-foaming agent (Claims 1, 9 and 10). Stoner et al. teach isopentane isobutene in the composition (column 11, example 4). Isopentane isobutene can be propellants. Stoner et al. teach the addition of lower alkanolamine salts of fatty acids and lower alkanolamine salts of N-fatty acyl sarcosines where the fatty moiety has 10 to 20 carbon atoms (Claims 5-7, 12 and 13). The Examiner interprets this to mean a lathering agent. Stoner et al. teach the addition of additives such as aloe and vitamins such as vitamin A palmitate, panthenol and vitamin E as well as preservatives (Column 5, lines 33-53).

Stoner et al. teach a second composition to be used in the second part of the treatment (Column 7, lines 3-45). The second composition comprises a humectant in the form of an aftershave splash, lotion or gel (column 7, lines 40-42). Stoner et al. teach that the second composition can contain a wide variety of other cosmetic ingredients (column 7, lines 34-36).

Fike teaches the addition of 0.1 to 15 weight percent of vitamin B₃ (niacin) or derivatives thereof to compositions for delivering active ingredients through the skin or mucosal tissues (Abstract; column 4, lines 46-67 and claims 1, 6 and 7, for example).

Lisboa et al. teach aerosol foamable fragrance compositions with respect to the shaving gel art (Abstract and column 1, lines 17-22). Lisboa et al. teach composition with from about 0.01 to about 10.0 % of α racemic bisabolol (claims 6 and 7).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

1. Stoner et al. does not expressly teach a topical cosmetic composition including vitamin A, vitamin E, aloe, and at least one member selected from the group consisting of bisabolol, panthenol, vitamin B₃ and vitamin C, wherein said vitamin A, said vitamin E, said aloe, and said at least one member are each independently included in an amount of about 0.001% to about 5% by weight of the composition.

2. Stoner et al. do not expressly teach a topical cosmetic composition with vitamin C, vitamin B₃ and bisabolol.

3. Stoner et al. do not expressly teach an array of topical cosmetic compositions for combined application to the skin comprising a second topical cosmetic composition selected from the group consisting of an aftershave gel, a moisturizing lotion, a cleansing wash and a cleansing bar wherein the second topical composition comprises vitamin A, vitamin E, aloe, bisabolol, panthenol, vitamin B₃ and/or vitamin C or combinations of these ingredients.

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

1. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make a topical cosmetic composition including vitamin A, vitamin E, aloe, and at least one member selected from the group consisting of bisabolol, panthenol, vitamin B₃ and vitamin C, wherein said vitamin A, said vitamin E, said aloe, and said at least one member are each independently included in an amount

Art Unit: 1616

of about 0.001% to about 5% by weight of the composition and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Stoner et al. teach the addition of vitamins and additives and provide guidance on the amount of additives to add in Column 11, example 4. Here, the only components greater than 5% by weight are water and the lathering agent and the additive dimethicone/dimethiconol is only present at 0.19 wt%. It is only a matter of judicious selection and routine optimization for one of ordinary skill in the art to add other additives, such as vitamins, in the amount taught by Stoner et al. to read on the amount instantly claimed.

2. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add vitamin B₃ in an amount from 0.1 to 15 % by weight, as suggested by Fike, 0.01 to 10 wt% bisabolol, as suggested by Lisboa et al., and vitamin C to the composition of Stoner et al. and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because the references are directed to topical skin compositions and it is obvious to one of ordinary skill in the art to combine the combinations. "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). Stoner

et al. teach the addition of vitamins and vitamin C is obvious to one of ordinary skill in the art.

3. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make an array of topical cosmetic compositions for combined application to the skin comprising a second topical cosmetic composition selected from the group consisting of an aftershave gel, a moisturizing lotion, a cleansing wash and a cleansing bar wherein the second topical composition comprises vitamin A, vitamin E, aloe, bisabolol, panthenol, vitamin B₃ and/or vitamin C or combinations of these ingredients and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Stoner et al. teach a method and compositions comprising more than one cosmetic composition as described above. It is merely a matter of judicious selection and routine optimization for one of ordinary skill in the art to produce a second composition comprising vitamin A, vitamin E, aloe, bisabolol, panthenol, vitamin B₃ and/or vitamin C or various combinations of such ingredients which are taught in the art by Stoner et al, Lisboa et al., and Fike for the same use as described above.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

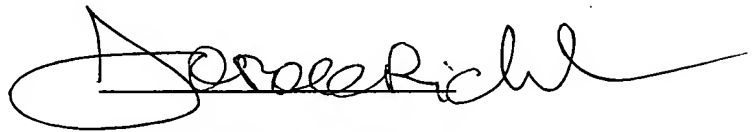
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F (6:15 am-3:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ernst Arnold
Patent Examiner
Technology Center 1600
Art Unit 1616
May 02, 2006

A handwritten signature in black ink, appearing to read 'Johann Richter', with a large, stylized initial 'J' and a long horizontal flourish extending to the right.

Johann Richter, Ph.D. Esq.
Supervisory Patent Examiner